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2 PHILLIPS & ASSOCIATES  
3 3030 North Third Street, Suite 1100  
4 Phoenix, Arizona 85012  
Telephone: (602) 258-8900  
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5 Attorney for Plaintiff

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF MARICOPA**

8 ANTHONY ARLOTTA, III, Individually,

9 Plaintiff,

10 vs.

11 COALFIELD SERVICES, INC. a foreign  
corporation; TERENCE NECESSARY AND  
12 JANE DOE NECESSARY, husband and wife;  
JOHN DOES I-X; JANE DOES I-X; BLACK  
CORPORATIONS I-X; and WHITE  
13 PARTNERSHIPS I-X,

14 Defendants.

Case No.: **CV2008-029775**

**COMPLAINT**

Tort – Motor Vehicle

16 Anthony Arlotta, III (hereinafter Plaintiff), for his complaint, alleges:

17 **I**

18 Plaintiff is, and was at all times material herein, a resident of the county of Maricopa,  
19 State of Arizona.

20 **II**

21 Defendant Coalfield Services, Inc. is a foreign corporation, authorized to do business  
22 within the County of Maricopa, State of Arizona.

23 **III**

24 Defendant Terrence Necessary and Jane Doe Necessary are, and were at all times  
25 material herein, husband and wife, and residents of the State of Virginia.

1                                  IV

2                                  At all times material herein, Terrence Necessary was acting individually, and for and on  
3 behalf of the marital community comprised of himself and Jane Doe Necessary, for which said  
4 marital community should be held liable to Plaintiff under applicable law. Further, the true  
5 name of Defendant Jane Doe Necessary is unknown, and Plaintiff will seek leave to amend this  
6 complaint once said Defendant's true name becomes known.

7                                  V

8                                  Defendants John Does and Jane Does I-X, and Black companies, partnerships, and  
9 White corporations I-X (hereafter fictitious defendants) are, and were at all times material  
10 herein, principals and/or employers for which Terrence Necessary was acting as an agent,  
11 servant, or employee within the scope of his agency or employment at the time of the accident  
12 alleged hereafter. As soon as their true names become known, Plaintiff will amend this  
13 Complaint. Said fictitious defendants should be held liable to Plaintiff for the actions of  
14 Terrence Necessary on the theories of respondeat superior, agency, equitable estoppel, or other  
15 applicable law.

16                                 VI

17                                 Upon belief, all fictitious Defendants were residents of the County of Maricopa, State of  
18 Arizona; and/or were organized and existing under the laws of Arizona and doing business in  
19 the State of Arizona; and/or were foreign corporations, businesses, etc., qualified to do  
20 business within the State of Arizona, and actually doing business therein on the date of the  
21 accident alleged herein.

22                                 VII

23                                 All acts and events alleged hereafter occurred within the County of Maricopa, State of  
24 Arizona.

25                                 ///

VIII

The minimum jurisdictional amount for filing this action has been satisfied. This Court has jurisdiction and venue is proper.

## **COUNT ONE: NEGLIGENCE**

IX

Plaintiff re-alleges and incorporates paragraphs 1-8 above as if fully set forth herein.

X

8 On March 16, 2008, at East Moreland and North 1<sup>st</sup> Street in Phoenix, Arizona,  
9 Plaintiff was riding his bicycle northbound in the pedestrian ramp entering Margaret T. Hance  
10 Park. At the same time and place, Defendant Terrence Necessary was driving a Jeep  
11 westbound on the south part of the pedestrian walkway in Margaret T. Hence Park, when he  
12 collided with Plaintiff.

## COUNT TWO: NEGLIGENCE PER SE

XII

Plaintiff re-alleges and incorporates paragraphs 1-10 above as if fully set forth herein.

XIII

Defendant Terrence Necessary was using the walkway which is not intended for vehicles and is negligent per se.

### **COUNT THREE - VICARIOUS LIABILITY**

XIII

Plaintiff re-alleges and incorporates paragraphs 1-12 above as if fully set forth herein.

XIV

At all time relevant to this Complaint, Defendant Terrence Necessary was acting as an agent, servant or employee within the scope of his employment on behalf of Defendant Coalfield Services, Inc. and therefore, Defendant Coalfield Services, Inc. should be held liable

1 to Plaintiff for the actions of Terrence Necessary on the theory of respondeat superior, agency,  
2 equitable estoppel, or other applicable law.

3 **XV**

4 Defendant Coalfield Services, Inc. is vicariously liable to Plaintiff for all injuries and  
5 other damages caused by Defendant Terrence Necessary.

6 **DAMAGES**

7 **XVI**

8 Plaintiff re-alleges and incorporates paragraphs 1-15 above as if fully set forth herein.

9 **XVII**

10 As a direct and proximate result of the negligent, reckless, and careless conduct of  
11 Defendants, Plaintiff suffered severe injuries which caused him pain, suffering, distress, mental  
12 and emotional anguish and anxiety, and a general decrease in his quality and enjoyment of life,  
13 all in an amount to be proven at trial.

14 **XVIII**

15 As a further direct and proximate result of the negligent, reckless, and careless conduct  
16 of Defendants, Plaintiff incurred expenses for medical care, and may incur expenses for future  
17 medical care, all in an amount to be proven at trial.

18 **XIX**

19 As a further direct and proximate result of the negligent, reckless, and careless conduct  
20 of Defendants, Plaintiff has or may have suffered lost earnings and may suffer future lost  
21 earnings and/or diminished earning capacity.

22 **XX**

23 As a further direct and proximate result of the negligent, reckless and careless conduct  
24 of Defendants, Plaintiff has or may have suffered damage to his bicycle or other personal  
25 property, and is or may be entitled to compensation for repair or replacement of the bicycle or

other property, for such property's accelerated depreciation, and for the loss of its use until it was/is repaired or replaced, all in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each other defendant named herein, jointly and severally, as follows:

- a. General damages with interest at the highest lawful rate from date of loss or date of the judgment, whichever is sooner until paid in full;
  - b. Special damages with interest at the highest lawful rate from date of loss or date of the judgment, whichever is sooner until paid in full;
  - c. Court costs with interest at the highest lawful rate from date of loss or date of the judgment, whichever is sooner until paid in full;
  - d. For damage and/or loss of use of property;
  - e. For interest accruing on all damages until paid; and
  - f. Such other relief as the Court deems proper.

**JURY DEMAND**

Plaintiff requests a trial by jury.

DATED this 21 day of November, 2008.

**PHILLIPS & ASSOCIATES**

By John A. Schill, Esq.  
Attorney for Plaintiff

1 John A. Schill (#018904)  
2 PHILLIPS & ASSOCIATES  
3 3030 North Third Street, Suite 1100  
4 Phoenix, Arizona 85012  
5 Telephone: (602) 258-8900  
6 Facsimile: (602) 279-9155

7 Attorney for Plaintiff

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

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16 JOHN DOES I-X; JANE DOES I-X; BLACK  
17 CORPORATIONS I-X; and WHITE  
18 PARTNERSHIPS I-X,

19 Defendants.

20 Case No.: **CV2008-029775**

21 **SUMMONS**

22 Tort – Motor Vehicle

23 IF YOU WANT THE ADVISE OF A  
24 LAWYER, YOU MAY WISH TO CONTACT  
25 THE LAWYER REFERRAL SERVICE AT  
602-257-4434 OR ON-LINE AT  
[WWW.LAWYERFINDERS.ORG](http://WWW.LAWYERFINDERS.ORG). LRS IS  
SPONSORED BY THE MARICOPA  
COUNTY BAR ASSOCIATION

10 STATE OF ARIZONA TO THE DEFENDANTS:

11 **TERENCE NECESSARY AND JANE DOE NECESSARY**

12 YOU ARE HEREBY SUMMONED and required to appear and defend, within the time  
13 applicable, in this action in this Court. If served within Arizona, you shall appear and defend  
14 within twenty (20) days after the service of the Summons and Complaint upon you, exclusive  
15 of the day of service. If served outside of the State of Arizona – whether by direct service, or  
16 by publication – you shall appear and defend within thirty (30) days after the service of the  
17 Summons and Complaint upon you is complete, exclusive of the day of service. Service by  
18 publication is complete thirty (30) days after the date of first publication. Direct service is  
19 complete when made. Service upon the Arizona Motor Vehicle Superintendent is complete  
20 thirty (30) days after filing the Affidavit of Compliance and return receipt or Officer's Return.  
21 Where process is served upon the Arizona Director of Insurance as an insurer's attorney to  
22 receive service of legal process against it in this State, the insurer shall not be required to  
23 appear, answer or otherwise plead until the expiration of forty (40) days after the date of  
24 service upon the Director. A.R.S. §§ 20-222, 28-1027.

25 YOU ARE HEREBY NOTIFIED that in case of your failure to appear and defend  
within the time applicable, judgment by default may be rendered against you for the relief  
demanded in the Complaint.

YOU ARE CAUTIONED that in order to appear and defend, you must file an answer or other proper response in writing with the Clerk of the Court, accompanied by the necessary filing fee, within the time required, and you are required to serve a copy of any answer or other response upon the plaintiff's attorney.

The name and address of the plaintiff's attorney is:

John A. Schill  
PHILLIPS & ASSOCIATES  
3030 North Third Street, Suite 1100  
Phoenix, Arizona 85012

Requests for reasonable accommodations for persons with disabilities must be made to the division assigned to the case by parties at least three (3) judicial days in advance of a scheduled court proceeding.

**SIGNED AND SEALED:**

MICHAEL K. JEANES  
Clerk of the Superior Court

NOV 24 2008

By



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**1** Carl F. Mariano, SB# 010994  
**2** Felice Guerrieri, State Bar No. 021107  
**3** **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
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**5** Attorneys for Defendants

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IN AND FOR THE COUNTY OF MARICOPA

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Plaintiff,

vs.

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14 JOHN DOES I-X and JANE DOES I-X;  
BLACK CORPORATIONS I-X and WHITE  
15 PARTNERSHIPS I-X

## 16 Defendants.

No. CV2008-029775

## NOTICE OF REMOVAL

(Assigned to the Honorable J. Kenneth Mangum)

17 NOTICE is hereby given that Defendants have filed a Notice of Removal of Action, in the  
18 United States District Court, District of Arizona, on this date. A copy of the Notice of Removal is  
19 attached.

RESPECTFULLY SUBMITTED this 31 day of December, 2008.

## **LEWIS BRISBOIS BISGAARD & SMITH LLP**

- 20 -

Carl F. Mariano  
Felice F. Guerrieri  
Attorneys for Defendants

LEWIS BRISBOIS BISGAARD & SMITH LLP

1 ORIGINAL of the foregoing filed this  
2 31st day of December, 2008, to:

3 Clerk, Maricopa County Superior Court  
4 201 West Jefferson  
Phoenix, Arizona 85003

5 COPY of the foregoing mailed/faxed this  
6 31st day of December, 2008, to:

7 Honorable J. Kenneth Mangum  
201 West Jefferson  
Phoenix, Arizona 85003

8 John A. Schill, Esq.  
9 PHILLIPS & ASSOCIATES  
10 3030 North Third Street, Suite 1100  
Phoenix, Arizona 85012  
Attorneys for Plaintiff

11 Terri Crawford

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